Supreme Court, U.S.
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No.

In the

Supreme Court of the United States

FELICIA A. POPE,

Petitioner,

versus

PILGRIM'S PRIDE CORPORATION,

Respondent.

Petition for a Writ of Certiorari to
The United States Court of Appeals
for the Eleventh Judicial Circuit

PETITION FOR WRIT OF CERTIORARI

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BEST AVAILABLE COPY

QUESTION PRESENTED FOR REVIEW

WHETHER THE ELEVENTH JUDICIAL CIRCUIT HAS SANCTIONED THE DISTRICT COURT'S DEPARTURE FROM ACCEPTED USUAL COURSE OF JUDICIAL PROCEEDINGS BY AFFIRMING THE LOWER COURT'S INTERPRETATION OF A LOCAL RULE THAT COUNTERMANDS FEDERAL RULE CIVIL PROCEDURE 6?

LIST OF PARTIES

As far as Petitioner is able to ascertain, the names of all parties to the proceedings in the court whose order is sought to be reviewed here appear in the caption of the case.

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PETITION FOR A WRIT OF CERTIORARI

Felicia A, Pope respectfully petitions that a Writ of *Certiorari* be issued to review the judgment of the United States Court of Appeals for the Eleventh Judicial Circuit entered on October 5, 2007, because the court has sanctioned such a departure of accepted and usual course of judicial proceedings by affirming its district court's interpretation of a local rule in a manner that clearly countermands Federal Rule of Civil Procedure 6.

The Court is squarely presented with numerous holdings that the lower courts may not interpret local rules in a manner that is contradictory to the Federal Rules of Civil Procedure, hereinafter, "Rule", and consequently such a local rule is therefore invalid (*See Jones & Laughlin Steel Corp. v. Gridiron Steel Co,* 382 U.S. 32, 86 S. Ct. 152, 15 L.Ed.2d 26 (1965); *U.S. v. Hess,* 982 F.2d 181, 185 (6th Cir. 1992)). Accordingly, the Court should reverse the Eleventh Circuit's opinion in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eleventh Judicial Circuit is dated October 5, 2007. It is not published in the Federal Reporter, but it is published *Pope v. Pilgrim's Pride,* 2007 US LEXIS 2359 (11th Cir. 2007) (App. A, 1.a). The district court's order denying the motion to strike the bill of costs is unreported (App. B, 5.a).

JURISDICTION

The judgment of the United States Court of Appeals for the Eleventh Judicial Circuit was entered on October 5, 2007. A Petition for Rehearing and Suggestion for Rehearing *En Banc*, which was timely filed on October 15, 2007, was summarily denied on November 15, 2007.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254 (1). The initial jurisdiction of the district court was invoked pursuant to 28 U.S.C. § 1333 and 42 U.S.C. § 2000e-5(f)).

RELEVANT PROVISIONS INVOLVED

Local Rule 54.1 (ND Ga.) mandates that a bill of costs be filed by the prevailing party within thirty (30) days after the entry of judgment for costs to be taxed a part of the judgment (App. D, 12.a). Rule 6(a), establishes the methodology for computing time periods for litigation in federal courts. In particular, the first day of the act, event or default from which a designated period of time begins to run shall not be included, but the last day of the period so computed shall be included. Rule 6(e) adds three additional days to the prescribed time period when a party must act within a prescribed period of time after service of documents as described in Rule 5(a).

STATEMENT OF THE CASE

Pursuant to 42 U.S.C. § 1981 and Title VII of the *Civil Rights Act of 1964*, as amended, Petitioner filed the subject matter case in June 2005, when

the Respondent, Pilgrim's Pride, retaliated against her as a result of her prior EEOC charge/settlement and discriminated against her based upon her race. Respondent moved for summary judgment. The district court granted the motion on March 7, 2007, and judgment was entered against Petitioner on the foregoing date. No appeal from that judgment had been taken.

On April 9, 2007, Respondent filed its bill of costs (33 days after the entry of judgment). Petitioner filed a timely motion to vacate costs arguing in part that said bill of costs was untimely. The district judge held that the bill of costs was timely filed and relied seemingly upon his interpretation of LR 6.1 (ND Ga.)(App. E, 13.a) as adding three additional days to all response times greater than 11 days regardless as to whether service was involved or not.

Petitioner disagreed with the district court, and filed her timely appeal to the Eleventh Circuit. The Eleventh Circuit, although seemingly agreeing with Petitioner's argument, nevertheless affirmed based upon the premise that it must give deference to a district court's interpretation of its local rule (App. A, 1.a). Petitioner filed a timely petition for rehearing[1] and suggestion for rehearing

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[1] Petitioner, relying upon Seventh Circuit authority, *NEPSK, Inc. v. Town of Houlton*, 283 F.3d 1, 7 (7th Cir. 2002), argued in her Appellant's brief and Reply brief that the district court's seemingly interpretation of LR 6.1(ND Ga.) was in direct conflict with Rule 6, subparts (a) and (e), and thus, this seemingly erroneous interpretation was not entitled to any deference by the reviewing court. The Eleventh Circuit did not answer Petitioner, and Respondent never addressed this argument in its Appellee's brief.

en banc in which she presented numerous authorities even from this Court that unequivocally held that a local rule that countermands a federal rule is invalid, and that a district court's interpretation of a local rule is entitled to no deference when said interpretation countermands the federal rules.

The Eleventh Circuit summarily denied said petition (App. C, 10.a). Thus, leaving the issue before this Court whether a district judge may disregard the federal rules in computing time periods for which an act prescribed by local rules must be performed in favor of his interpretation of a local rule when such an interpretation clearly produces a different deadline for performing the act than is otherwise available under the federal rules. The Court is now presented with the opportunity to reverse the Eleventh Circuit's opinion that it must give deference to a district court's methodology of computing timeframes via local rules when such an interpretation clearly conflicts with the federal rule.

REASONS FOR GRANTING THE PETITION

A. THE ELEVENTH CIRCUIT COURT OF APPEALS' DECISION IN *POPE v. PILGRIM'S PRIDE* SANCTIONS SUCH A DEPARTURE FROM ACCEPTABLE AND USUAL COURSE OF JUDICIAL PROCEEDINGS BY A LOWER COURT AS TO CALL FOR AN EXERCISE OF THIS COURT'S SUPERVISORY POWER.

The courts that have addressed the issue as to the validity of a local rule that countermands a

federal rule, inclusive of this Court, have rejected the Eleventh Circuit's reasoning. In *Jones & Laughlin Steel Corp, id,* this Court held over 40 years ago that the Sixth Circuit Court of Appeals' directive [local rule] requiring its district court's clerk office to be opened on Saturday, did not render the appellant's notice of appeal filed on the following Monday untimely when said deadline fell on a Saturday.

Moreover, this Court held, "the provision of Rule 6(a) was not made inapplicable by the order of the Court of Appeals directing that the District Court Clerk's offices be open for business on Saturday morning", *id.* The methodology of computing time is governed by Rule 6(a) and any local rule governing time computation must be consistent with Rule 6(a)(*See* 28 U.S.C. §§ 2072 and 2075; Rule 83; *Weibrecht v. Southern Ill. Transfer, Inc,* 241 F.3d 875, 879 (7th Cir. 2001)).

Likewise in the case at bar, Rule 6(a) and 6(e) are not inapplicable because of the Eleventh Circuit's interpretation of the district court's interpretation of LR 6.1 (ND Ga.) as adding three additional days to *all* response times greater than 11 days (regardless as to whether service was involved or not[2]).

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[2] Even though Respondent argued in the district court that the 30-day timeframe was extended by three additional days because the notice of judgment of the district court was transmitted electronically, *i.e.* served, neither the Eleventh Circuit nor its district court agreed with this position. As the Eleventh Circuit held, judgments of the district courts are not within the class of documents served upon the parties consistent with Rule 5, and thus Rule 6(e) does not

(continued)

After *Jones & Laughlin Steel Corp, id* had been decided the Sixth Circuit then applied the foregoing precedent to conclude that a local rule that required a response time within 10 calendar days was invalid since it was in conflict with the methodology for computing timeframes as set forth in Rule 6(a) (*See U.S. v. Hess, id.*)

Petitioner argues that the Eleventh Circuit sanctioning its district court's approach of adding three additional days to any timeframe regardless as to whether service was, or was not, involved has no purpose or basis in law. A cursory review of the legislative history of Rule 6(e) would clearly show that this rule was enacted to compensate for delays that could be caused by mail delivery (the drafters of the Federal Rules did not arbitrarily extend the response time by three days for no valid reason). Rule 6(e)'s three additional days for service was promulgated to provide protection for the party ***served*** (*See Wright & Miller, Fed. Pract. & Proc. Civil 3d § 1171*).

As the Federal Circuit held, a local rule need not be directly contradictory to a national rule to be invalid; it is enough that the local rule is inconsistent with the purposes of the national rule (*See Micro Int'l Ltd v. Monolithic Power System, Inc,* 467 F.3d 1355, 1365 (Fed. Cir. 2006)). Clearly the Eleventh Circuit's interpretation of the district judge's interpretation of the local rule is at odds with the purpose of Rule 6(e) since service need not be involved to get the additional three days *(continued)*

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apply (*See Cavaliere v. Allstate Insurance Co,* 996 F.2d 1111 (11th Cir. 1993)).

(then one would ask for what purpose does the local rule extend all 11-day or greater response times by three days?).

B. THE ELEVENTH CIRCUIT DECISION IN *POPE v. PILGRIM'S PRIDE* GENERATES INCONSISTENCY WITHIN THE ELEVENTH CIRCUIT.

Notwithstanding that several binding Eleventh Circuit opinions are supportive of Petitioner's position; nevertheless, the Eleventh Circuit in *Pope v. Pilgrim's Pride* clearly disregarded binding circuit precedents in affirming the district court's preference of its interpretation of a local rule that unquestionably conflicts with a federal rule (*See Jackson v. Corey*, 375 F.3d 1291, 1296 (11th Cir. 2004); *U.S. v. One Piece Real Prop., 5800 SW 74th Miami, FL*, 363 F.3d 1099, 1102 (11th Cir. 2004); *In Re: S.E. Banking Corp*, 69 F.3d 1539, 1551 (11th Cir. 1995)).

In *Jackson, id*, binding precedent, the Eleventh Circuit did hold the following:

> F.R.Civ.P. 6 (and each of its subparts) was prescribed under 28 U.S.C. § 2072. Rule 83 states in part (a) that a "local rule shall be consistent with but not duplicative of Acts of Congress and rules adopted under 28 U.S.C. § 2072..." LR 4.20 to the extent it is inconsistent with Rule 6(e) is therefore invalid.

Accordingly, Petitioner is at a loss to comprehend why the Eleventh Circuit has

disregarded its own binding precedents as well as this Court's precedent in sanctioning the district court's departure from acceptable and usual judicial proceedings. This is not a grey area, and is not subject to different interpretations. It is clear, when an act is to be performed within 30 days after the entry of judgment, the litigants in federal court count the prescribed period by Rule 6 and not an interpretation of a local rule that produces different results.

CONCLUSION

Petitioner respectfully submits that the Eleventh Circuit erred in the following respects:

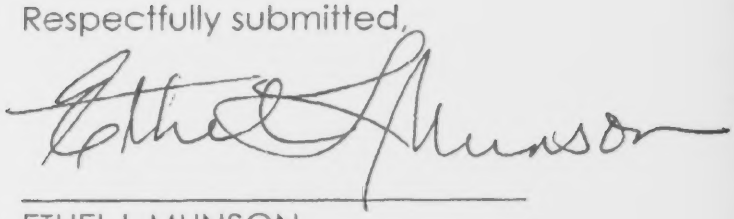
In interpreting the district court's interpretation of a local rule that was clearly inconsistent with the federal rule.

In giving deference to the district court's interpretation or misapplication of a local rule that would have rendered the foregoing invalid.

In concluding that the district court's final order should be affirmed.

Therefore, Petitioner respectfully prays that this Court grant this petition for writ of *certiorari;* reverse the decision of the Eleventh Circuit; vacate the finding of the district court that Respondent's bill of costs was timely; remand to the district court to have any and all costs stricken from the judgment entered against Petitioner at the district court level; and order any and all other relief that may be just and proper.

Respectfully submitted,



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APPENDIX A – ELEVENTH CIRCUIT OPINION-DATED OCTOBER 5, 2007

IN THE UNITED STATES COURT OF APPEAL
FOR THE ELEVENTH CIRCUIT

No. 07-12582
Non-Argument Calendar

D.C. Docket No. 05-01469-CV-TCB-1

FELICIA A. POPE,

Plaintiff-Appellant,

versus

PILGRIM'S PRIDE CORPORATION,

Defendant-Appellee.

Appeal from the United States District Court for
the
Northern District of Georgia

(October 5, 2007)

BLACK, CARNES and MARCUS, Circuit Judges.
PER CURIAM:

This is Felicia Pope's appeal of an order finding that the Pilgrim's Pride Corporation timely

filed its bill of costs after the district court granted summary judgment in the company's favor.

It is undisputed that Pilgrim's Pride filed the bill of costs thirty-three days after the entry of the judgment. Although the district court's local rules require that "[a] bill of costs must be filed by the prevailing party within thirty (30) days after the entry of judgment," N.D. Ga. R. 54.1, the district court found that the bill was timely filed by relying on its Local Rule 6.1. That rule provides that:

> For time periods greater than eleven (11) days, the three (3) day mail extension of [Fed.R.Civ.P.] 6(e) is added to the stated response time to create a lengthened time period. For example, a response time of thirty-three (33) days.

N.D. Ga. R. 6.1. Federal Rule of Civil Procedure 6(e), in turn, gives parties an additional three days "[w]henever a party must or may act within a prescribed period after service," as long as service is made in a certain ways that are not here relevant.

On appeal, Pope contends that the district court misinterpreted Local Rule 6.1. She emphasizes that the three-day extension provided under Fed.R.Civ.P. 6(e) and referenced in Local Rule 6.1 applies only to time periods in which "a party must or may act within a prescribed period after service." And since the thirty-day period for filing a bill of costs is a period that begins to run "after the entry of judgment",

N.D. Ga. R. 54.1 (emphasis added), the three-day extension is unavailable. In other words, she says, since judgments are not subject to service", Fed. R. Civ. P. 6(e) and (accordingly) Local Rule 6.1 do not apply.

Pope's interpretation of these rules seems reasonable to us, and it may even be the interpretation we would follow were we to decide the issue in the first instance. See, e.g., Cavaliere v. Allstate Ins. Co., 996 F.2d 1111, 1113-14 (11th Cir. 1993)(holding that the three-day grace period in Fed. R. Civ. P. 6(e) does not apply to motions for a new trial under Fed. R.Civ. P. 59, in part because the time period for filing those motions begins to run from "entry of judgment").

The problem with her argument, however, is that it doesn't explain why the district court's reading of Local Rule 6.1 is unreasonable. By its terms, that rule applies to "time periods greater than eleven (11) days". The district court very well could have read that phrase to mean "all time periods greater than eleven (11) days". The rule's grant of extensions to "response time[s]" is similarly subject to multiple reasonable interpretations. Although one plausibly could read that phrase as referring only to time periods triggered by some sort of service, we think the district court also could have reasonably read it as referring to any time period within which a party must act.

All these details aside, we must remember that we are to give "great deference to a district court's interpretation of its local rules." Clark v. Housing Authority, 971 F.2d 723, 727 (11th Cir. 1992). "A district court is the best judge of its own

rules", id. (citing United States Fid. & Guar. Co. v. Lawrenson, 334 F.2d 474, 467 (4th Cir. 1964)(internal quotation marks omitted), and all that is required is that the interpretation be reasonable, see id. at 728. Because that is the case here, we must affirm the district court's order.

AFFIRMED.

APPENDIX B DISTRICT COURT'S ORDER DATED JUNE 5, 2007

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FELICIA A. POPE,	)
	)
Plaintiff,	)
	)CIVIL ACTION FILE
v.	)No. 1:05-CV-1469-TCB
	)
PILGRIM'S PRIDE CORPORATION,	)
	)
Defendant.	)

ORDER

This matter is before the Court on Plaintiff's Motion to Vacate Bill of Costs. On March 7, 2007, the Court adopted the Magistrate Judge's Report and Recommendation which granted summary judgment to Defendant. On April 9, 2007, Defendant filed a Bill of Costs in the amount of $5,579.03.

I. Discussion

Plaintiff moves to vacate costs entirely on the grounds that Defendant filed an untimely, improperly served, unsigned bill of costs. She further objects to Defendant's in-house copy

charges. The Court will address each of Plaintiff's objections in turn.

A. Untimeliness

Plaintiff asserts that Defendant's Bill of Costs should have been filed within thirty days after entry of judgment, or no later than April 6, 2007, and therefore should be dismissed as untimely. The Local Rules provide that the three-day mail rule applies to response times, so that "a response time of thirty (30) days becomes a response time of thirty-three (33) days." LR 6.1(B), NDGa. The Court agrees with Defendant that the Bill of Costs was filed within the allotted time period.

B. Improper Service

The Declaration on the Bill of Costs states that a copy was mailed to plaintiff's counsel, but lists an incorrect name and address. Regardless, the Notice of Electronic Filing ("NEF") for the document plainly shows that Ms. Munson received electronic notification at the time the document was filed with the Court. Appendix H, Exhibit A (II) (B) of the Local Rules states that the NEF, which is generated for each electronically filed document, "shall be the equivalent of service of the pleading or other paper by first class mail, postage prepaid". The incorrect information as to the attorney served printed in the declaration appears to be merely a typographical error and the Court finds that no harm has been done.

C. No Signature

Plaintiff argues that because the Bill of Costs is not signed, it is not properly verified as

required by 28 U.SC. § 1924. Defendant responds that the electronic signature is sufficient to satisfy its obligation to provide a sworn and signed verification. Appendix H, Standing Order 04-01, of the Local Rules provides as follows:

> The electronic filing of a petition, pleading, motion, or other paper by an attorney who is a registered participant in the Court's Electronic Case Filing System shall constitute the signature of that attorney under the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure. The attorney whose login and password are used to accomplish an electronic filing certifies that the attorney and the attorney's law firm have authorized the filing.

Therefore, the Court finds Defendant's document as properly verified.

D. Objections to Photocopy Charges

Costs that may be taxed properly pursuant to Rule 54(d) (1) of the Federal Rules of Civil Procedure are set forth in 28 U.S.C. § 1920. The only specific item in the Bill of Costs to which Plaintiff objects is the $1,662.45 in photocopying expenses by Defendant's counsel's law firm. The itemization attached to the Bill of Costs merely reflects the description "Smith, Gambrell & Russell, Photocopying Expenses" and the

amount. Defendant responds that given the length of this case (nearly two years) and the extensive briefing required, the copying costs are reasonable.

The statue limits recovery of copying costs to "[f]ees for exemplification and copies of papers necessarily obtained for use in the case." 28 U.S.C. § 1920(4). While the absence of details in the itemization makes it difficult to know what was copied and whether it was necessary, the amount requested is not unreasonable under the facts of the case. The Court is satisfied that Defendant has sufficiently demonstrated in its response that at least some of these copies charges were necessary. *See Walker v. Bozeman*, 243 F. Supp.2d 1298, 1309 (N.D. Fla. 2003)("[A]lthough defendant has asserted that plaintiff failed to establish that some amounts were necessarily incurred in this action, plaintiff's attorney's verification of the Bill of Costs did so certify. Details were sometimes missing, but a general assertion of necessity was present"). Rather than require Defendant to expend further time in documenting costs, the Court will reduce the in-house copy charges by one-third due to the lack of explanation. *See Beraha v. C.R. Bard, Inc*, 870 F. Supp. 1085, 1092 (N.D. Ga. 1994)("Although the total amount might be disallowed subject to later explanation and objection, the Court will allow one-half of B&K's copy expenses in an effort to save the parties additional fees for submitting and contesting

relatively minor costs.") The Court will award $1,108.30 for in-house copy charges.[1]

II. Conclusion

Plaintiff's Motion to Vacate Costs [73] is GRANTED IN PART and DENIED IN PART. The Clerk is DIRECTED to re-tax costs against Plaintiff in the amount of $5,024.88, as follows:

Fees for service:	$625.50
Fees of court reporter:	$2,672.09
Fees for copying[2]:	$1,437.79
Fees for witnesses:	$289.50
TOTAL:	$5,024.88

IT IS SO ORDERED this 5th day of June, 2007.

/s/ Timothy C. Batten

Timothy C. Batten, Sr.
United States District Judge

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[1] The calculation is as follows: $1,662.45 ÷3= $554.15; $1,662.45-$554.15= $1,108.30.

[2] On the Bill of Costs form, Defendant entered this charge on the line for "[f]ees and disbursements for printing." Obviously, the charge should have been placed two lines lower on the Bill of Costs form, which is the space for entering the amount incurred for exemplification and copies.

APPENDIX C – ELEVENTH CIRCUIT OPINION- DATED NOVEMBER 15, 2007

IN THE UNITED STATES COURT OF APPEAL
FOR THE ELEVENTH CIRCUIT

No. 07-12582

FELICIA A. POPE,

Plaintiff-Appellant,

versus

PILGRIM'S PRIDE CORPORATION,

Defendant-Appellee.

On Appeal from the United States District Court
for
The Northern District of Georgia

Before BLACK, CARNES AND MARCUS, Circuit Judges.

PER CURIAM:
The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition (s) for Rehearing are DENIED.

ENTERED FOR THE COURT:

/s/ Ed Carnes

UNITED STATES CIRCUIT JUDGE

APPENDIX D –LOCAL RULE 54.1 (UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA)

54.1 BILL OF COSTS. (255-7).

A bill of costs must be filed by the prevailing party within thirty (30) days after the entry of judgment. A bill of costs which is not timely filed will result in the costs not being taxed as part of the judgment.

APPENDIX E –LOCAL RULE 6.1 (UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA)

LR 6. TIME.

LR6.1 THREE DAY MAIL EXTENSION (202-3).

A. *Time Periods Less than Eleven (11) Days. (202-3)*- For time periods of less than (11) days, the response time is first calculated as directed by Fed.R.Civ.P. 6(a) and excludes weekends and legal holidays, three (3) days for mailing is added to the computation (Fed. R.Civ. 6(e)). For example, under Rule 6(a), a ten (10) day response period is at least fourteen (14) days longer if a legal holiday is included) and the period extends to (17) days if service is by mail.

B. *Time Periods Greater than Eleven (11) Days. (202-3)* for time periods greater than eleven (11) days, the three (3) day mail extension of Rule 6(e), is added to the response time to create a lengthened time period. For example, a response time of (30) days becomes a response time of thirty-three days.